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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

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16 A1 ON TRACK SLIDING DOOR
17 REPAIR AND INSTALLATION,
18 INC, SYLVIA SCHICK, and
19 DEBORAH SCHICK, individually
20 and on behalf of all others similarly
21 situated,

22 Plaintiffs,

23 vs.

24
25 BRANDREP, LLC, a Delaware
26 limited liability company,

27 Defendant.

28 Case No. 3:21-CV-03013-SI

**BRANDREP, LLC'S REPLY TO
OPPOSITION TO MOTION TO
DISMISS FOR IMPROPER
VENUE (FRCP 12(b)(3)) AND, IN
THE ALTERNATIVE, MOTION
TO TRANSFER VENUE (28
U.S.C. § 1404)**

Date: November 12, 2021

Time: 10:00 a.m.

Courtroom: 1

Judge: Hon. Susan Illston

First Amended Complaint Filed on
April 29, 2021

24 **BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS**
25 **FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE,**
26 **MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)**

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28 **BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE
ALTERNATIVE, MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)**

1 A. **Introduction**

2 Plaintiffs' opposition emphasizes its contacts with the Northern District, but
 3 it has only one serial plaintiff out of three residing there.¹ In contrast, defendant's
 4 entire operation is in the Central District, where it has many employees, possibly
 5 former employee witnesses, and records that will be the subject of the bulk of the
 6 discovery in this case.

7 Plaintiffs attempt to minimize the Central District's interest in regulating
 8 businesses within its District by arguing that the Northern District has an interest in
 9 protecting its citizens (from the alleged calls into the Northern District that
 10 allegedly violated the TCPA). However, none of the plaintiffs have given
 11 defendant its phone record, though defendant has requested it many times.
 12 Hutchinson Decl., ¶¶11-17. In any case, the focus of the putative class action is
 13 nationwide, where the Northern District is on equal footing with the rest of the
 14 country.

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 16 A. **Plaintiffs' Characterization of Defendant's Motion is Inaccurate**

17 Plaintiffs argue that defendant's motion to transfer venue is "based
 18 exclusively on the location of its headquarters and employees." Opposition, p. 1,
 19 ln. 17. The assertion is completely inaccurate. Defendant also bases its motion on:
 20 1) only one out of three plaintiffs residing in the Northern District, 2) defendant
 21 having no employees or branch offices in the Northern District, 3) the failure of
 22 plaintiffs to give defendant their phone records showing actual contact in the
 23 Northern District, 4) the interest of the Central District to regulate businesses in its

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 27 ¹ See the Hutchinson Decl., ¶¶4, 9-23 for evidence that Sylvia Schick, Louis Floyd (aka A1 On Track Sliding Door
 Repair and Installation), and Maria Schaffer are serial plaintiffs. Ms. Schick and A1 On Track are plaintiffs herein.
 Maria Schaffer was a plaintiff in the original complaint but was apparently dropped for forum shopping reasons.
 Hutchinson Decl., ¶16.

1 district, 5) the putative TCPA class action weakening the weight of the plaintiffs' 2 choice of forum, and 6) evidence of plaintiffs' forum shopping.

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4 **B. Plaintiffs' Slippery Slope Argument Is Misleading Rhetoric**

5 Plaintiffs then go on to argue that "this argument, if accepted, would all but 6 guarantee the transfer of every class action to a defendant's home forum regardless 7 of where the defendant may have inflicted harm." Opposition, p. 1, ln. 17-19. Not 8 only is this "slippery slope" argument based on a fallacy, but it is also misleading 9 rhetoric.

10 Even if hypothetical, putative class action defendants solely based their 11 motions to transfer venue on their location of headquarters and employees, the 12 outcomes would vary based on each specific situation. Such hypothetical motions 13 might hinge on: 1) the number and locations of the plaintiffs, 2) whether 14 defendants had contacts in the original filing district, 3) the nature of the claims, 4) 15 the quality and quantity of contacts in the respective districts. This Court, in its 16 discretion, can rule based on its review of the *Jones* factors. *Jones v. GNC* 17 *Franchising, Inc.*, 211 F.3d 496, 499 (9th Cir. 2000).²

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19 **C. Plaintiffs' Contacts to the Northern District Are Weak**

20 As stated above, only two of the three plaintiffs reside in the Northern 21 District. The alleged harm came in the form of one or two alleged phone calls to 22 mobile phones, which could have been received anywhere. First Amended 23 Complaint ("FAC"), ¶¶18, 22, 25. Plaintiffs haven't even given the defendant their 24

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26 ² The court may consider factors such as: (1) the location where the relevant agreements were negotiated and 27 executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the 28 respective parties' contacts with the forum, (5) the contacts relating to the plaintiffs' cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof. *Jones v. GNC* *Franchising, Inc.*, 211 F.3d 496, 499 (9th Cir. 2000).

1 phone records, though the defendant has requested it many times. Hutchinson
 2 Decl., ¶11-17. The quality of plaintiffs' contacts to the Northern District are weak.
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4 **D. Little or No Weight Should Be Given to the Plaintiffs' Choice of Forum**

5 Because plaintiffs have chosen to represent a class, their choice of forum is
 6 given less weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987); see also *Neff*
 7 *v. Tobin Dodge, LLC*, 2:20-cv-00261-JAM-DMC (E.D. Cal. Nov. 18, 2020); see
 8 also *LaGuardia v. Designer Brands, Inc.*, No. 19CV1568 JM(BLM), 2020 WL
 9 2463385, at *8 (S.D. Cal. May 7, 2020) (noting that TCPA class actions are
 10 normally attorney driven and require limited participation from the named
 11 plaintiff).

12 Plaintiffs cite the *Roiling v. E*Trade* case for the proposition that a
 13 plaintiff's choice of forum should only be given less weight if there is evidence of
 14 forum shopping. Opposition, p. 6, ln. 3-22; *Roiling v. E*Trade Sec., LLC*, 756 F.
 15 Supp. 2d 1179, 1185 (N.D. Cal. 2010). In that case, defendant E*Trade had larger
 16 offices in the Northern District than in New York, where it wanted to transfer the
 17 case to. *Id.* at 1186. While evidence of forum shopping should not benefit a
 18 plaintiff's choice of venue, that does not mean it is a necessary condition of giving
 19 less weight to class action.³

20 That being said, defendant does have evidence of plaintiffs' forum shopping.
 21 "Where forum-shopping is evident, however, courts should disregard plaintiff's
 22 choice of forum." *Foster v. Nationwide Mut. Ins. Co.*, No. C 07-04928 SI, 2007

23
 24 ³ "In part, the reduced weight on plaintiff's choice of forum in class actions serves as a guard against the dangers of
 25 forum shopping . . ." *Id.* at 1185. (Emphasis added). This shows that it is only a part of the rationale for giving
 26 less weight to class-action plaintiffs' choice of forum.; the case cited in *E*Trade* states this proposition in the
 27 affirmative: "Where forum-shopping is evident, however, courts should disregard plaintiff's choice of forum."
Foster v. Nationwide Mut. Ins. Co., No. C 07-04928 SI, 2007 WL 4410408, at *2 (N.D. Cal. Dec. 14, 2007) (Illston,
 J.). See also *Shultz v. Hyatt Vacation Mktg. Corp.*, No. 10-CV-04568-LHK, 2011 WL 76735, at *5 (N.D. Cal. Feb.
 28, 2011) "In a class action, this deference is somewhat tempered, however. A class action with potential class
 members all over the United States has been found to reduce the significance of the plaintiff's choice."

1 WL 4410408, at *2 (N.D. Cal. Dec. 14, 2007) (Illston, J.). First, the plaintiffs are
 2 serial plaintiffs who do not have phone bills to evidence their claims. Hutchinson
 3 Decl., ¶¶4, 9-23.

4 Second, plaintiffs eliminated plaintiff Maria Schaeffer from the original
 5 complaint, apparently because she lived in Huntington Beach (Central District).⁴
 6 Complaint in case # 3:20-cv-05110-TSH in the Northern District of California, ¶10
 7 (“Plaintiff Schaeffer is a natural person over the age of eighteen (18) and a resident
 8 of the State of California; Schaeffer resides in **Huntington Beach, Orange**
 9 **County.**”) (emphasis added); Hutchinson Decl., ¶¶9-16. This shows plaintiffs’
 10 have engaged in forum shopping in this specific matter with a preference for the
 11 Northern District.

12 Therefore, the plaintiffs’ choice of forum should carry no weight. Even if
 13 the Court isn’t convinced by the evidence presented, plaintiffs’ choice of forum
 14 should not weigh significantly against transfer.

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16 **E. Plaintiffs’ Class Action, if Successful, Will Likely Create Numerous**
 17 **Contacts within the Central District**

18 If Plaintiffs can certify their class, they will very likely add numerous
 19 plaintiffs in the Los Angeles-Orange County metropolitan area and other areas
 20 within the Central District. Having numerous plaintiffs in the Central District
 21 would balance out the contacts between districts, thereby giving plaintiffs a strong
 22 contact with the Central District. See *Shultz v. Hyatt Vacation Mktg. Corp.*, No.
 23 10-CV-04568-LHK, 2011 WL 76735, at *5 (N.D. Cal. Feb. 28, 2011) “In a class
 24 action, this deference is somewhat tempered, however. A class action with

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26 ⁴ Plaintiffs’ counsel, Taylor Smith and Rebecca Davis filed an identical TCPA complaint against Brandrep on
 27 7/28/20 (Case # 3:20-cv-05110-TSH in the Northern District of California). The Plaintiffs were J. Scott Threde,
 Louis Floyd, Sylvia Schick, and Maria Schafer.

1 potential class members all over the United States has been found to reduce the
 2 significance of the plaintiff's choice."

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4 **F. Costs Weigh in Favor of the Central District**

5 The only cost advantage to having the case in the Northern District is the
 6 presence of plaintiff A1 On Track (i.e. serial plaintiff Louis Floyd).⁵ ⁶

7 In contrast, all of defendant's employees, executives, and records are in the
 8 Central District. To the extent there are any outsourced, out-of-the-country
 9 services relevant to discovery, the source of information for such discovery would
 10 still be in the Central District.

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12 **G. The Public Interest Weighs in Favor of the Central District**

13 The Central District has a local interest in adjudicating this claim because its
 14 citizens have a strong interest in adjudicating claims involving the local business.
 15 The Central District would want to ensure that business located in its district abide
 16 by federal laws and do not engage in unlawful telemarketing practices. See *Geraci*
 17 *v. Red Robin Int'l, Inc.*, No. 1:18-cv-15542-RMB, at *5 (D. N.J. Jun. 21, 2019).

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19 **H. Conclusion**

20 Therefore, Brandrep, LLC respectfully requests that the Court dismiss the
 21 first amended complaint pursuant to F.R.C.P. 12(b)(3) for improper venue.
 22 Alternatively, Brandrep, LLC respectfully requests that the Court, in the interests
 23 of justice and for the convenience of the parties, transfer this case to the Central

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27 ⁵ Defendant agrees to have his deposition taken near his business or residence in the Northern District or electronically.

28 ⁶ Plaintiffs' active counsel in this case isn't even located in the Northern District.

1 District of California, Southern Division (Orange County) pursuant to 28 U.S.C. §
2 1404.
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4 Dated: October 19, 2021

LEGAL SOLUTIONS 2 U
A Professional Corporation

6
7 /s/ Patrick L. Blair
8 Patrick L. Blair
9 Attorney for Defendant
Brandrep, LLC

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BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)

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PROOF OF SERVICE

COUNTY OF ORANGE)
)
STATE OF CALIFORNIA)

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 18201 Von Karman, Ste. 701, Irvine, California 92616.

On October 19, 2021, I served the following document described as:

**BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS
FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE,
MOTION TO TRANSFER VENUE (28 U.S.C. § 1404); HUTCHINSON
DECLARATION IN SUPPORT OF BRANDREP, LLC'S REPLY TO
OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE
(FRCP 12(b)(3)) AND, IN THE ALTERNATIVE, MOTION TO TRANSFER
VENUE (28 U.S.C. § 1404)**

On the following interested parties in this action:

Taylor T. Smith
Via CM/ECF
Attorney for plaintiffs
Email: tsmith@woodrowpeluso.com

Rebecca L. Davis
Via CM/ECF
Attorney for plaintiffs
Email: rebecca@lozeaudrury.com

VIA CM/ECF (email) By electronic filing through the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on October 19, 2021 at Irvine, California.

/s/ Ron Kort
Ron Kort

BRANDREP, LLC'S REPLY TO OPPOSITION TO MOTION TO DISMISS FOR IMPROPER VENUE (FRCP 12(b)(3)) AND, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE (28 U.S.C. § 1404)